UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

SUNOCO, INC. (R&M) Employer/Petitioner	
and	Case 4–UC–413
ATLANTIC INDEPENDENT UNION[1] Union Involved	

REGIONAL DIRECTOR'S DECISION AND ORDER

I. INTRODUCTION AND BACKGROUND

Sunoco, Inc (R&M), a subsidiary of Sunoco, Inc., manufactures petroleum products and chemicals and distributes these products on both a retail and wholesale basis. Until about February 2002, Sunoco (R & M) operated through various business units, including a Logistics unit.[2] The Logistics Unit was responsible for operating two pipelines which transported petroleum products from Sunoco refineries and 35 terminals at which the products were stored pending delivery. The Logistics Unit also delivered the products by truck to retail and wholesale customers. The Union Involved, Atlantic Independent Union (AIU), has for a number of years represented a bargaining unit consisting of the "operating and clerical employees" employed at 15 of Sunoco (R & M)'s 35 terminals. The unit is comprised of Terminal Operators, Drivers, and Mechanics, all of whom worked in the Sunoco (R & M) Logistics Unit.

In February 2002, Sunoco, Inc. spun off its pipeline and terminal operations into two new companies, Sunoco Partners LLC (herein called Sunoco Partners) and Sunoco Logistics Partners LLP (herein called Sunoco Logistics). The pipelines and terminals were transferred to Sunoco Logistics, and Sunoco Partners is Sunoco Logistics' general partner and manages its business.

Following Sunoco Logistics' acquisition of the pipelines and terminals, the Terminal Operators included in the bargaining unit were transferred to Sunoco Partners' payroll. Sunoco (R & M) retained control over the delivery of product from the terminals, and the unit Drivers and Mechanics remained on its payroll.

The contract covering the bargaining unit expired in March 2004. After unsuccessfully attempting during negotiations for a new agreement to induce the Union Involved to accept separate contracts for the employees employed by the two companies, on January 19, 2005,

[1] The name of the Union Involved was amended at the hearing.
[2] The other units were Retail and Marketing, Coke, Chemicals, and Refining and Supply.

Sunoco (R & M) filed the unit clarification petition in this case. The petition seeks to have the bargaining unit split into two units, one encompassing the Terminal Operators employed by Sunoco Partners and the second covering the Drivers and Mechanics who remain employed by Sunoco (R & M).

The Union Involved contends that the petition was not timely filed and should therefore be dismissed. Alternatively, the Union Involved contends that the petition should not be granted because Sunoco (R & M), Sunoco Logistics, and Sunoco Partners constitute a single employer and that the existing unit of Terminal Operators, Drivers, and Mechanics remains appropriate.

A Hearing Officer held a hearing in this matter, and the parties filed briefs.[3] I have considered the evidence and arguments presented by the parties, and, as explained in greater detail below, I find that the petition was not timely filed. Accordingly, this Decision shall not deal with the issue of the appropriateness of the unit.

In this Decision, I will first present a brief overview of the operations of Sunoco (R & M), Sunoco Partnership, and Sunoco Logistics. I will then set forth the legal standards, relevant facts, and analysis concerning the issue of the timeliness of the petition.

II. OVERVIEW OF OPERATIONS

Sunoco Logistics is a limited partnership with one general partner, Sunoco Partners, and a number of other partners. Sunoco Partners is a limited liability company wholly owned by subsidiaries of Sunoco, Inc. Sunoco, Inc. also owns some limited partnership shares in Sunoco Logistics, as do a number of other individuals and entities who purchased the shares in the open market. As the general partner, Sunoco Partners has sole responsibility for management of the Sunoco Logistics business. The limited partners are not involved in the management of Sunoco Logistics' operations and do not have any role in the selection of its Board of Directors.

The bargaining unit includes 117 Drivers, 24 Terminal Operators, four Mechanics, two leadmen, and two warehouse employees. 23 of the Terminal Operators and one of the warehouse employees are on the Sunoco Partners payroll, and the remaining unit employees work for Sunoco (R & M).

The Terminal Operators sample and test product stored at the terminals, dispense product to customers, maintain terminal equipment, and prepare reports on terminal operations. The Drivers load product at the terminals and transport it to end users, and the Mechanics service the trucks used by the Drivers.

[3] The record from a recent representation case involving Sunoco (R & M), Sunoco Partners, Sunoco Logistics, and the Union Involved, and raising some of the same issues, Case 4-RC-21006, was incorporated into the record in this case.

III. LEGAL STANDARDS

Unit clarification is appropriate for resolving the unit placement of individuals in newly-created classifications or in classifications which have undergone recent changes in duties or responsibilities. It is not appropriate for upsetting an agreement or an established practice of parties regarding the placement of existing classifications. *Robert Wood Johnson University Hospital*, 328 NLRB 912, 913 (1999); *Union Electric Co.*, 217 NLRB 666, 667 (1975). Where a group of employees has been historically included in or excluded from the bargaining unit, the Board as a general rule will not permit a party, by means of a unit clarification proceeding, to effect a change in the definition of the bargaining unit. *Monongahela Power Company*, 198 NLRB 1183 (1972); *Wallace-Murray Corporation,* 192 NLRB 1090 (1971). The Board will, however, allow clarification where recent significant changes in an employer's organizational structure make an historic unit no longer appropriate. *U.S. Tsubaki, Inc.*, 331 NLRB 327, 328 (2000).

The Board generally declines to clarify bargaining units midway through the term of an existing collective-bargaining agreement that clearly defines the unit. *Wallace-Murray Corporation,* supra. To do otherwise would be unnecessarily disruptive of established bargaining relationships. *San Jose Mercury*, 200 NLRB 105 (1972). Where the parties cannot resolve issues of unit scope in negotiations and do not wish to press the issue at the expense of reaching an agreement, however, the Board will entertain a unit clarification petition filed shortly after a contract is executed absent an indication that the petitioner abandoned its position on the unit issue in exchange for some concession in bargaining. *St. Francis Hospital*, 282 NLRB 950, 951 (1987).

IV. FACTS

In September 1996, Sunoco (R & M) and the Union Involved entered into a collective-bargaining agreement covering the unit. The agreement was originally effective through 2000, but the parties agreed in 1998 to extend it through March 2003, and they later agreed to another extension through March 31, 2004.

Sunoco Partners and Sunoco Logistics were created on October 15, 2001. In an October 22, 2001 letter, Sunoco Logistics President Deborah Fretz informed employees and the Union Involved that Sunoco Logistics would be assuming control over some of Sunoco (R & M)'s assets and that employees assigned to work with those assets would be placed on the payroll of Sunoco Partners. Fretz' letter assured the impacted employees that employment policies would remain unchanged following the transfer to Sunoco Partners and that the employees would be able to continue participation in Sunoco, Inc. benefit plans and programs. The Union Involved responded with a November 9, 2001 letter confirming its understanding that the creation of Sunoco Logistics would not impact the outstanding agreement between Sunoco (R & M) and the Union Involved and that Sunoco (R & M) would continue to honor the agreement.

On February 2, 2002, Sunoco (R & M) Human Resources Representative Ruth Clauser wrote to John Kerr, the President of the Union Involved, that Sunoco Logistics would assume control over "certain transportation and terminal assets owned by" Sunoco (R & M) effective

February 8 and that employees working on these assets would be shifted to the Sunoco Partners payroll effective February 10. Clauser suggested that the contract between Sunoco (R & M) and the Union Involved be amended to include Sunoco Partners as a party. Kerr responded with a March 15, 2002 letter stating that the Union Involved was not willing to alter the contract without further information about the effects of Sunoco Logistics' acquisition of Sunoco (R & M)'s assets. Clauser did not reply, and the parties had no further communications at this juncture about adding Sunoco Partners as a party to the agreement.

The Drivers and Mechanics remained employed by Sunoco (R & M) after February 2002 when the terminals were purchased by Sunoco Logistics; only the Terminal Operators were moved to Sunoco Partners' payroll. For some period after February 2002, however, all three classifications of employees – Drivers, Mechanics and Terminal Operators – continued to be supervised by the same managers, who were employed by Sunoco Partners. By late 2003, Sunoco (R & M) had hired a supervisory staff to manage the Drivers and Mechanics, and they were no longer subject to supervision by Sunoco Partners personnel.

In October 2003, the parties began negotiations for a contract to replace the agreement scheduled to expire at the end of March 2004. Since Sunoco Partners now employed some of the employees in the bargaining unit, it joined the negotiations. From the start of bargaining, Sunoco (R & M) and Sunoco Partners proposed splitting the bargaining unit into separate units of Drivers and Mechanics employed by Sunoco (R & M) and Terminal Operators employed by Sunoco Partners. The Union Involved did not agree to this proposal, and by February 2004 the parties had agreed on all other elements of a contract, leaving unit scope as the only issue.

Sunoco Partners official David Chalson and Sunoco (R & M) representative Ruth Clauser both testified that at a bargaining session on March 22, 2004, Sunoco (R & M) and Sunoco Partners withdrew their proposal for separate units, permitting the parties to reach agreement on a contract. Chalson and Clauser further claimed that representatives of the two companies expressly stated at the March 22 meeting that they intended to file a unit clarification petition with the Board to resolve the question of whether the existing unit should be split. Clauser explained that Sunoco (R & M) and Sunoco Partners decided to withdraw their proposal because they did not want to be accused of illegally bargaining to impasse over a proposal to change the bargaining unit. She testified that she sent Kerr a letter on March 24 which confirmed that the parties had reached agreement and reiterated the companies' intent to seek unit clarification.

Kerr provided a different version of the circumstances leading to the conclusion of negotiations. According to Kerr, the parties did not reach agreement at the March 22 meeting. Rather, Clauser contacted him by phone on March 31 or April 1 and announced that Sunoco (R & M) and Sunoco Partners were withdrawing their proposal to split the unit and that, as a consequence, the parties had a contract. Kerr insisted that Clauser said nothing in this telephone conversation about a unit clarification petition. Kerr admitted receiving the letter which Clauser said she sent on March 24 reserving the right to seek unit clarification, but he maintained that he did not receive it until sometime after April 1. He suggested that the letter had been backdated by Clauser.

On April 15, the Union Involved informed unit employees that the parties had reached agreement but that Sunoco (R & M) and Sunoco Partners had expressed an intent to file a petition to split the unit. The contract was ratified by the unit on May 17. In October 2004, Sunoco (R & M) and Sunoco Partners submitted a draft agreement to the Union Involved for signature, and the Union Involved responded by suggesting corrections. As of the time of the hearing, no agreement had been formally executed, but both parties nonetheless acknowledged that they had a contract and have been abiding by it since the agreement was reached.

On September 27, 2004, more than six months after the parties had reached agreement on a contract, Sunoco (R & M) representative Clauser and Sunoco Partners representative Kimberlee Kanazeh jointly wrote Kerr a letter indicating that the two companies intended to file a unit clarification petition unless the parties were able to reach an agreement to split the bargaining unit. This letter explained the reasons the companies believed separate units were appropriate and suggested that the parties engage in further discussions in an effort to resolve the issue. The Union Involved agreed to discuss the matter, and further bargaining took place between October 2004 and January 2005. The parties were unable to resolve their differences, and Sunoco (R & M) filed the petition in this case on January 19, 2005.

V. ANALYSIS

The Union Involved contends that the unit clarification petition should be dismissed because Sunoco (R & M) and Sunoco Partners failed expressly to reserve the right to file at the time the parties reached agreement. The Union Involved further contends that the petition was not filed shortly after the negotiations concluded, as required under *St. Francis Hospital*, supra.

There is a factual dispute as to whether Sunoco (R & M) and Sunoco Partners expressly reserved the right to file this petition. Clauser and Chalson testified that the right to seek clarification was expressly reserved during negotiations, contrary to Kerr's testimony. Even assuming no express reservation was made, however, I find that this would not preclude the companies from seeking clarification. In this connection, the Board does not require an express pre-agreement reservation of the right to seek clarification in order to process a petition. A petition will be entertained so long as the unit issue was not resolved in bargaining and the circumstances do not indicate that one of the parties abandoned its position on the unit question in return for concessions on other matters from the opposing side. *The Brookdale Hospital Medical Center,* 313 NLRB 592, fn. 3 (1993); *St. Francis Hospital,* supra. Whatever company representatives may have said in this case at the time they dropped their proposal to split the bargaining unit, there is no evidence that the change in position was prompted by concessions by the Union Involved on other issues. In fact, all other issues had been resolved long before. The companies attempted to reach agreement despite the dispute over unit scope and to avoid being accused of an unfair labor practice if they persisted in demanding that the unit be split. This is precisely the type of situation in which the Board has deemed unit clarification appropriate.

Further, any doubt about the companies' intentions was eliminated by Clauser's March 24 letter which made clear that a subsequent unit clarification petition was contemplated. Whether the letter was sent on March 24 or later, it was indisputably dispatched shortly after agreement was reached and well in advance of employee ratification of the parties' contract on

May 17. Thus, even assuming the Union Involved had not been informed before receiving the letter of the companies' plan to file for clarification and believed the possibility of a split in the unit significantly altered the parties' tentative agreement, it had ample opportunity to abandon the proposed contract, but did not do so. Thus, the companies' failure expressly to reserve the right to file for unit clarification, if there was a failure, is no impediment to processing this petition.

The Union Involved's argument that the petition was not timely filed is on firmer ground. Where a party seeks clarification of unit issues left unresolved in bargaining, the Board requires a petition to be filed shortly after bargaining concludes. While petitions filed as long as 11 weeks after the conclusion of bargaining have been processed, *Baltimore Sun Company*, 296 NLRB 1023 (1989), the petition in this case was not filed until more than 35 weeks after employee ratification of the parties' contract. This period is too long to fall within the Board's requirements.[4]

The requirement that a unit clarification petition intended to resolve issues left over from bargaining be filed within a short time after negotiations conclude was designed to minimize the disruption to a bargaining relationship caused by the existence of unresolved questions of unit scope. Parties are entitled to know which employees are covered by their agreement and which employees are not covered. Substantial delay in securing clarification leaves the employer guessing as to how the agreement should be applied, the union uncertain about which employees it represents, and employees unable to determine whether they are entitled to contract benefits. In this case, the Union Involved and the companies reached agreement in late March 2004 on a contract effective retroactive to March 1, 2004 and scheduled to expire in March 2008. By the time Sunoco (R & M) filed for unit clarification in mid-January 2005, nearly 25 percent of the contract term had elapsed, a period too far into the agreement to seek a substantial alteration of unit scope.

The parties have never formally executed the contract, but this failure does not affect the decision to find the petition untimely. In this connection, no party contests the contract's validity, and the parties have abided by it since reaching agreement. Concededly, the *Baltimore Sun* decision suggests that the timeliness of a post-negotiation unit clarification petition should be measured from the date on which the parties formally execute a new contract.[5] Rejecting a union claim that a subsequently filed unit clarification petition was untimely, the Board noted, inter alia, that the time between execution and filing was the relevant period for assessing timeliness "in the present inquiry." 296 NLRB at 1024. That language, however, was an indication of the time period the Board intended to use in evaluating timeliness in that case and did not establish a firm rule setting the date of execution as the yardstick for assessing the

[4] The Union Involved asserts that the timeliness of the petition should be measured from February 5, 2004, the date on which the parties reached agreement on all issues except unit scope. However, the parties did not have a contract on that date, since the unit issue remained unresolved. Rather, timeliness should be evaluated in relation to the May 17, 2004 ratification date, which was 35 weeks before the petition was filed on January 17, 2005. Alternatively, timeliness could be measured based on the date that the parties reached a full agreement on a contract, which occurred on March 22 at the earliest, 43 weeks before the filing of the petition.

[5] The contract in that case was signed 30 days after bargaining concluded.

timeliness of all post-negotiation clarification petitions. Using the date of execution as the benchmark for timeliness in this circumstance, where the parties had not formally signed their new contract at the time of the hearing, over 14 months after they reached agreement, would effectively erase the requirement that unit clarification be sought shortly after the end of negotiations and permit a party to delay the time for filing almost indefinitely by procrastinating in signing a new contract. Thus, the timeliness of the petition in this case should be measured from the date on which the parties reached agreement on their new contract.[6]

The Employer seeks to excuse its delay in filing by pointing to the parties' post-agreement efforts to resolve the unit scope question. However, the employers did not propose renewed negotiations on the unit issue until September 27, nearly six months after agreement was reached and more than four months after the contract was ratified. Further, the parties had already bargained over the question of dividing the unit prior to arriving at a settlement, and the companies point to nothing suggesting any change in position by either side which might have made a resolution more likely in September 2004 than six months earlier. In these circumstances, Sunoco (R & M) waited too long to file the petition and it will, accordingly, be dismissed.

VI. CONCLUSIONS

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer/Petitioner is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Union Involved is a labor organization within the meaning of the Act.

4. The Employer/Petitioner did not file the petition in this case in a timely manner.

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

[6] See *Edison Sault Electric Co.*, 313 NLRB 753 (1994). In that case, in finding the petition untimely, the Board looked to the date the employees ratified the contract, not the subsequent date when the contract was executed. The Board primarily relied, however, on the employer's failure to reserve the right to file a unit clarification petition during bargaining.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. A request for review may also be submitted by E-mail. For details on how to file a request for review by E-mail see http://gpea.NLRB.gov/. This request must be received by the Board in Washington by 5:00 p.m., EDT on **September 21, 2005.**

Signed: September 7, 2005

at Philadelphia, PA

/s/ [Dorothy L. Moore-Duncan]
DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four